IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8551 of 2004
with
Special Civil Application No. 11981 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AHMEDABAD ELECTRICITY CO. LTD.

Versus

NAVINKUMAR PUNAMCHAND RATHOD

Appearance:

1. Special Civil Application No. 8551 of 2004
MR KB PUJARA for Petitioner No. 1
MS HINA DESAI for Respondent No. 1
MR JB PARDIWALA for Respondent No. 2
Mr. MR Mengdey, AGP for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 29/11/2004

ORAL COMMON JUDGEMENT

In both these petitions the petitioner, Ahmedabad Electricity Company Ltd., has challenged the legality and validity of the orders passed by the City Civil Court at Ahmedabad below Notice of Motion and in granting

temporary mandatory injunction directing the A.E.C. to reconnect the supply to the original-plaintiffs, respondents herein. The petitioner has also challenged the entertainment of the civil suit by the learned City Civil Court, Ahmedabad by issuing summons and notices as the same are without any jurisdiction.

2. The respondent of Special Civil Application No. 8551 of 2004 is the consumer of the petitioner-company and his Consumer Service No. is 267985. Inspection was carried out by the officers of the petitioner company on 10.6.2004 when it was found that there was a gap between the glass and the body of the meter and scratches were found on the glass and therefore a case of malpractice/theft of electricity was found and registered against the respondent and accordingly supply to the respondent consumer came to be disconnected on 10.6.2004. Assessment for theft/malpractice was carried out and a supplementary bill for an amount of Rs. 15,572 came to be issued. It appears from the record that the respondent consumer paid Rs. 2500 on 22.6.2004 and the remaining amount was still outstanding. The respondent-consumer filed Civil Suit No. 1939 of 2004 before the City Civil Court at Ahmedabad and for a declaration regarding action against disconnection and also for mandatory injunction of restoration of supply. In the said suit, a Notice of Motion No. 1567 of 2004 came to be filed by the petitioner and the learned City Civil Court at Ahmedabad entertained the suit and passed the following order;

> "A.E.C. is hereby directed to reconnect Electric Supply of the plaintiff, Consumer No. 267985 of City Zone on the Plaintiff Side. Depositing a total sum of 30% of the Supplementary bill inclusive paid that within two days from deposit of amount."

Being aggrieved and dissatisfied with the order passed by the learned City Civil Court at Ahmedabad passed below Exh. 14 Notice of Motion in granting temporary mandatory injunction and also entertaining the civil suit by issuing summons/notices the petitioner, AEC has preferred the present Special Civil Applications under Articles 226/227 of the Constitution of India.

3. So far as Special Civil Application No. 11981 of 2004 is concerned, the respondent herein who is consumer of the petitioner Electricity Company is having Service

No. 202748. Inspection of the meter was carried out by the officers of the petitioner company on 8.9.2004 and it was found that the meter cover seals were disturbed. It was treated as a case of malpractice/theft of electricity and hence supply of electricity to the respondent was disconnected on 8.9.2004. Assessment of theft/malpractice was carried out by the petitioner company and a supplementary bill for an amount of Rs. 65,871 was issued. The original-plaintiff, respondent herein filed Civil Suit No. 2459 of 2004 in the City Civil Court at Ahmedabad for a declaration regarding action of disconnection and also for a mandatory injunction of restoration of electricity supply. The learned City Civil Court not only entertained the suit but passed an order below Exh. 15 Notice of Motion No. 2016 of 2004 directing the petitioner to restore electricity supply to the said connection on deposit of entire amount of assessment i.e. Rs. 45,000 in the Court in 2 equal instalments, i.e. 1st installment on or before 15th September 2004 and 2nd installment on or before 5.10.2004. A further order came to be passed on 14.9.2004 directing the respondent original-plaintiff to deposit remaining amount of Rs. 22,500 on or before 5.10.2004. Being aggrieved and dissatisfied with the aforesaid ex-parte temporary mandatory injunction issued by the learned City Civil Court, Ahmedabad directing the petitioner AEC to restore electric supply and in entertaining the aforesaid Civil Suit, the present Special Civil Application has been filed under Articles 226/227 of the Constitution of India.

4. Shri KB Pujara, learned advocate appearing on behalf of the petitioner, has submitted that in view of the provisions of Indian Electricity Act, 2003, ["the Act" for short] more particularly Section 145 of the Act, the Civil Suit itself is not maintainable and therefore the learned trial Court ought not to have issued the temporary mandatory injunction directing the petitioner to restore electric supply. It is also further submitted that considering the provisions of Section 145 of the Electricity Act of 2003, the Civil Court has no jurisdiction to issue any injunction and therefore also the order passed by the learned City Civil Court, Ahmedabad, issuing temporary mandatory injunction directing the petitioner AEC to restore electric supply is wholly without jurisdiction and illegal which requires to be quashed and set aside. Shri Pujara has relied upon the judgment of this Court rendered in Special Civil Application No. 8325 of 2004 dated 15.10.2004 in the case of A.E.C. Vs. Ramesh D. Devnani, and also another Judgment of the learned Single Judge of this Court dated

6.9.2004 in Special Civil Application No. 10007 of 2004 and other allied matters in the case of Leenaben, w/o. Sohanlal Hemandas Soni Vs. AEC, in support of his submission that the Civil Court has no jurisdiction to entertainthe suit and grant any injunction.

5. Nobody appears on behalf of the respondent, though served. Considering the provisions of Section 145 of the Act no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Assessing Officer referred to section 126 or an Appellate Authority referred to in section 127 or Adjudicating Officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action or to be taken in pursuance of any power conferred by or under this Act." Thus, entertainment of civil suit in respect to the proceedings with regard to any matter referred to under Sec. 145 is barred. This Court had an occasion to consider the provisions of Section 145 of the Act as well as condition of supply, more particularly Conditions No. 22 and 23 and has held in the case of AEC Vs. Ramesh D. Devnani rendered in Special Civil Application No. 8325 of 2004 dated 15.10.2004 as well as in the case of Leenaben, w/o. Sohanlal Hemandas Soni Vs. AEC, rendered in Special Civil Application No. 10007 of 2004 and other allied matters that the Civil Court has no jurisdiction to entertain the suit as well as the petitioner electricity company has authority to disconnect the electricity supply even without notice when there is a case of malpractice and/or theft of electricity.

6. Thus, considering the provisions of Section 145 of the Act as well as the aforesaid 2 judgments, the temporary ex parte mandatory injunction directing the petitioner AEC to restore electricity supply to the respondent on deposit of certain amount is without any jurisdiction and contrary to the provisions of Section 145 of the Act. The Civil Court has no jurisdiction to grant any injunction in respect of any action taken or to be taken in pursuance of any power conferred by or under the Electricity Act of 2003. Under the circumstances, the impugned orders passed by the City Civil Court at Ahmedabad below Notice of Motions in the respective suits being wholly without any jusrisdiction require to be quashed and set aside. Accordingly, the order passed by the City Civil Court at Ahmdabad in Notice of Motion No. 1567 of 2004 inCivil Suit No. 1939 of 2004 as well as the order passed below Notice of Motion No. 2016 of 2004 in Civil Suit No. 2459 of 2004 are hereby quashed and set

aside.

7. So far as the prayer of the petitioner to quash and set aside the action of the learned City Civil Court, Ahmedabad in entertaining the aforesaid Civil Suits are concerned, it appears from the record that the petitioner electricity company had never appeared before the learned City Civil Court at Ahmedabad by making an appropriate application pointing out to the learned City Civil Court, Ahmedabad that it has no jurisdiction, and not to entertain the suits and to dismiss the suits. Under the circumstances, the petitioner to make an appropriate application before the learned City Civil Court at Ahmedabad in the aforesaid civil suits pointing out to the learned City Civil Court, that it has no jurisdiction in view of Section 145 of the Electricity Act of 2003 as well as the judgments of this Court in the case of AEC Vs. Ramesh D. Devnani rendered in Special Civil Application No. 8325 of 2004 dated 15.10.2004 as well as in the case of Leenaben, w/o. Sohanlal Hemandas Soni Vs. AEC, rendered in Special Civil Application No. 10007 of 2004 and other allied matters and on receipt of the said application, the learned trial Court is directed to consider the same and pass an appropriate order after giving an opportunity to original-plaintiffs as well as the defendants. The learned trial Court to treat the same as a preliminary issue and is directed to decide the same as early as possible within the period of 2 months from the date of presentation of such application. Rule is made absolute in each of the petition to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

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